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Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

CRIMINAL APPEAL NO. 505 /2006

APRELLANTS/ ACCUSED	Ravi @ Ravindra S/o Thuma @ Sircaro aged about 22 Years, R/o Satorapara, Putena Bhilai, District Durg, (Chhattisgarh)

2829/06 Filed on 30/6/06 by Shri Advocate 30/6/06 R to D.R. (J) Purana Anusto Day... Anusto 4.7.06

V E R S U S

RESPONDENT	State of Chhattisgarh, Through, Police Station G.R.P. Bhilai District Durg (C.G.)

CONVICTION	**SENTENCE**
Under Section 457 of IPC.	**4 Years** Rigorous Imprisonment For & a fine of Rs. 500/-for offence U/S 457 IPC and 6 months imprisonment in case of defalt in deposit of fine:
Under Section 324 of IPC	**3 Years** Rigorous Imprisonment For & a fine of Rs. 500/-for offence U/S 457IPC and 6 months imprisonment in case of default in deposit of fine: 324 Anusto

CRIMINAL APPEAL UNDER SECTION 374 OF THE CODE OF CRIMINAL PROCEDURE, 1973

(61) (60)

A.F.R.
8.11.06

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No. 505 of 2006

Ravi @ Ravindra

Vs.

State of Chhattisgarh

Post for Judgment: 08.11.2006

Sd-/
Dilip Raosaheb Deshmukh
Judge

(62) (61)

A.F.R.
8.11.06

HIGH COURT OF CHHATTISGARH AT BILASPUR

Before: Hon'ble Shri Justice **Dilip Raosaheb Deshmukh**

Criminal Appeal No. 505 of 2006

Ravi @ Ravindra

Versus

State of Chhattisgarh

Present:

Shri Sandeep Shrivastava, Counsel for the appellant.
Shri M.P.S.Bhatia, Panel Lawyer for the State.

J U D G M E N T

(Delivered on this 08th day of November 2006)

This appeal is directed against the judgment dated 20th June 2006 delivered by Shri A.K.Gaikwad, 4th Additional Sessions Judge, Durg (C.G.) in Sessions Case No. 19 of 2006 whereby the appellant was convicted under Section 324 and 457 of the I.P.C. and sentenced to undergo rigorous imprisonment for three years under Section 324 I.P.C. and a fine of Rs.500/- and to rigorous imprisonment for four years under Section 457 I.P.C. and a fine of Rs.500/- . In default of payment of fine, it was directed that the appellant shall undergo rigorous imprisonment for six months for each offence.

2. Briefly stated the prosecution story is that Ramu Takri was working as Guard in the I.O.W. Construction Office of Railway Department in Bhilai-3 on 24.10.2004. At about 1.00 A.M. the appellant scaled the boundary wall and entered the premises to

commit theft of fish plates. Ramu Takri warned the accused from doing so whereupon the appellant snatched the club from Ramu Takri and assaulted him repeatedly on the skull and ran away. Ramu Takri lodged F.I.R. at 1.45 A.M. at Police Station G.R.P. Bhilai vide Ex.P.10. On medical examination, Dr. P. Akhtar, Senior Medical Officer, District Hospital, Durg P.W.15 found the following injuries:

(1) Lacerated wound on occipital region 5 cm x 1 cm x ½ cm with fresh bleeding.

(2) Lacerated wound on left parietal region extending to occipital region 8 cm. x 1 x ½ cm with fresh bleeding.

(3) Lacerated wound on left frontal region of scalp semicircular shape extending to right frontal region 14 cm x 2 x ½ cm and fresh bleeding.

(4) Lacerated wound on right parietal region 6 cm x 1 x ½ cm with fresh bleeding and 2nd one extending from right parietal to temporal region obliquely of size 10 cm x 1 cm. ½ cm with fresh bleeding.

(5) Lacerated wound on right parietal region extending obliquely to temporal region 7 cm x 1 cm x 1 cm bone exposed.

Ramu Takri was admitted in Shri J.L.N.Hopital and Research Centre. CT scan of Head revealed intracerebral bleed and small infarct right occipital region in left temporal region.

3. The appellant was arrested on 30.10.2004 by A.S.I. Raj Kumar Bojha P.W.14 of Outpost Charoda, Bhilai. On the memorandum of appellant dt.31.10.2004, one club was recovered from the bushes. The bloodstained clothes of the appellant were also recovered. Examination of the club and the clothes of the appellant by the F.S.L.

revealed presence of blood on these articles. After completion of investigation, the appellant was prosecuted.

4. The appellant abjured the guilt, pleaded innocence and false implication by Ram Takri and examined his father Thuma D.W.1 to establish previous animosity of Ram Takri with the father of the appellant. The prosecution examined as many as 15 witnesses. The trial Judge brushing aside the admission by Ramu Takri in his testimony that he had falsely implicated the appellant due to previous animosity with his father convicted and sentenced the appellant as aforesaid in paragraph 1 on the basis of the testimony of Ramu Takri which was corroborated by medical evidence.

5. Shri Sandeep Shrivastava, learned counsel for the appellant contended that Ramu Takri P.W.10 admitted in paragraph 13 of his cross-examination that due to previous animosity with Thuma, father of the appellant, the appellant had been falsely implicated by lodging a false report. It was also contended that the testimony of Ramu Takri that the appellant assaulted him with iron rod was wholly unworthy of any credit since not substantiated by the F.I.R. lodged by Ramu Takri. It was also pointed out that no theft was committed from the I.O.W. Office on the date of occurrence. Had the appellant entered the premises for committing theft, he would have done so after assaulting Ramu Takri due to which he fell on the ground. It was further pointed out that in paragraph 7 of his testimony, Ramu Takri admitted that while going to the police Station, he did not inform anybody about the occurrence. It was further contended that the testimony of Ramu Takri that the appellant had assaulted him with a rod and wooden club is wholly unworthy of credit since in the F.I.R. lodged by him, he

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stated that the appellant was empty handed. It was urged that the appellant was falsely implicated by Ramu Takri due to previous animosity with the father of the appellant. Learned counsel for the appellant also referred to the testimony of Ramu Takri in paragraph 6 which revealed that it was pitch dark at the place of occurrence and contended that the possibility that after being assaulted by some intruder whom Ramu Takri could not identify, a false report was lodged against the appellant to settle the score with his father. Reliance was placed on **Baldev Singh and another v. State of M.P.**[1] and **Sudhir and another v. State of Madhya Pradesh**[2]. On the other hand, Shri M.P.S.Bhatia, learned Panel Lawyer argued in support of the impugned judgment.

6. Having considered rival submissions, I have perused the record of Sessions Trial No. 19 of 2005. While appreciating the evidence of witnesses, the Courts are required to consider the probabilities factor and also the natural human conduct and not act merely in a mechanical manner. To illustrate, in the facts and circumstances of the present case, the following questions ought to have been considered while appreciating the evidence of the sole injured witness Ramu Takri P.W.10:

(a) Could the thief scale the high wall of the I.O.W. Construction Office which was fenced with barbed wire and angles on the top?

(b) Was the appellant armed with an iron rod or a club at the time of occurrence?

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1. 2003 CRI. L.J. 880 2. 1985 CRI.L.J.795

(c) Was it possible that on being challenged by the Guard who was armed with a club, the thief would, as a natural human conduct, run away or take the risk of indulging in a fight with the Guard after snatching his club?

(d) Did the appellant commit theft of any fish plates if he was so determined to do so even at the cost of inflicting injuries on the Guard?

(e) Did the Guard use the telephone facility in the office to inform his superiors after the occurrence?

(f) Could the Guard identify the assailant in darkness in the absence of any light?

(g) Did the Guard while on his way to the Police Station inform about the assault by the appellant to anyone?

(h) Did the Guard bear grudge against the father of the appellant and wanted to settle the score with him?

(i) Could the possibility be ruled out that the Guard could not identify the intruder in darkness and had used the opportunity to settle the score with the father of the appellant by lodging a false F.I.R.?

(j) Whether the testimony of the Guard that he was assaulted by an iron rod by the appellant inspired confidence?

(k) Did the Guard make any effort to assault the intruder-thief?

(l) Did the prosecution succeed in proving presence of human blood on the articles seized on the

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memorandum of the appellant?

7. All these factors should have been alive in the mind of the trial Judge while appreciating the evidence of the complainant-Ramu Takri, failing which, while mechanically evaluating and appreciating the testimony of the injured witness, as he did there was every likelihood to arrive at a wrong conclusion thereby causing failure of justice.

8. In **Zahira Habibulla H. Sheikh and another v. State of Gujarat and others**[3], the Apex Court has observed thus:

> "The courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on presiding officers of court to elicit all necessary materials by playing an active role in the evidence-collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that the ultimate objective i.e. truth is arrived at. This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system and courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness".

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3. (2004) 4 Supreme Court Cases 158

9. Bearing the above principle in mind, it is necessary to prescribe a word of caution for the trial Judge. If Ramu Takri P.W.10 in his cross-examination admitted without mincing any words that he had lodged a false report against the appellant due to animosity with his father, it was the duty of the trial Court to have elicited from Ramu Takri while recording evidence to explain this fact as against his testimony against the appellant. Merely brushing aside the above statement at the time of writing judgment, without making any effort whatsoever to clear the ambiguity while recording evidence, has resulted in failure of justice. The Judge while recording evidence is not required to be a silent spectator but is required to be vigilant and to elicit from the witness if he has understood the question before recording the answer given. In this case, the learned trial Judge did not do so.

10. Ramu Takri P.W.10 is the sole eye witness of the occurrence, besides being the injured person. In the F.I.R. promptly lodged by him vide Ex.P.10, he had narrated that the appellant had scaled the boundary wall of the construction Office of I.O.W. while he was on duty as a Guard. On his shouting, the appellant had snatched the club from his hand and hurling filthy abuses and threatening to kill him, had assaulted 3 - 4 times on his head by the club. However, in his testimony before the learned trial Judge, Ramu Takri stated that the appellant assaulted him by a club and also by an iron rod. Ramu Takri was confronted with the F.I.R. Ex.P.10 as also his statement recorded under Section 161 Cr.P.C. Ex.D.1 where the fact of assault by iron rod by the appellant was not narrated. If the appellant had scaled the boundary wall of the construction office to commit theft of fish plates, he would have, after assaulting Ramu Takri, stolen some

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articles from the construction office. Nothing of this sort happened. It is also to be seen that Ramu Takri admitted in paragraph 10 of his testimony that he neither informed his superior officers though telephone facility was available in the office nor informed anybody on his way to the Police Station. This conduct does not seem plausible. A thief who was not armed would, on being spotted by a Guard who was armed with a club, try to run away and would not snatch the club and assault the Guard. If he did so, the thief would not have returned without stealing the fish plates for which purpose he had entered the premises. If the Guard had a club in his hand and had spotted and challenged the thief, he would have atleast assaulted the thief with the club before the thief would snatch the club from him and assault him.

11. In paragraph 6 of his testimony, Ramu Takri admitted that at the time and place of occurrence, it was pitch dark. In his testimony, he did not state that he was carrying a torch in his hand. On the contrary, he went on to admit that there were no lights anywhere near the place and time of occurrence. He also admitted that the office wall is 6 ft. tall and on top of it iron angles and barbed wires were placed, and therefore, nobody could scale the wall to come inside the campus. This also creates a serious dent in the testimony of Ramu Takri that the appellant had scaled the wall and was committing theft of fish plates and on being challenged snatched the club from his hand and assaulted him repeatedly on the head.

12. To make matters still worse for the prosecution, in paragraph 13 of his cross-examination, Ramu Takri has, without mincing the words, clearly admitted that he had lodged a false report against the

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appellant due to previous animosity with his father-Thuma. This renders the testimony of Ramu Takri that it was the appellant who had assaulted him at the time and place of the occurrence extremely doubtful. Ramu Takri P.W.10 also admitted in paragraph 8 that Thuma had deposed against him during a departmental enquiry and was not on talking terms with him. Thuma D.W.1 has also stated that after he had deposed against Ramu Takri in the departmental enquiry, Ramu Takri had threatened to settle the score when a suitable occasion arose. True, Dr. P. Akhtar P.W.15 has proved the injuries sustained by Ramu Takri but in the aforesaid circumstances, it is not proved beyond the shadow of doubt that the appellant was the perpetrator of the crime. The report of the F.S.L. Ex.P.29 also does not prove the complicity of the appellant in the crime beyond the shadow of doubt since presence of human blood was not confirmed on the articles.

13. Having thus considered the evidence led by the prosecution in its entirety and in view of the serious infirmities in the testimony of Ramu Takri P.W.10, I am of the considered opinion that the testimony of Ramu Takri is highly suspicious and does not rule out the possibility that Ramu Takri was assaulted by some unknown thief in the dead of night while it was pitch dark in the construction office and to settle the score with the father of the appellant, Ramu Takri had lodged a false F.I.R. implicating the appellant for an offence which he did not commit. In these circumstances, the appellant is entitled to benefit of doubt.

14. In the result, the appeal is allowed. Conviction of the appellant under Sections 324 and 457 of the I.P.C. and the sentence awarded thereunder are set aside. The appellant is acquitted after giving him

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the benefit of doubt. The appellant shall be released forthwith, if not required in any other case.

Sd-/
Dilip Raosaheb Deshmukh
Judge

Anjani